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Subject: **ACTION:** Program Guidance Letter 00-3

Date: May 8, 2000

From: Manager, Airports Financial Assistance
Division, APP-500

Reply to
Attn. of:

To: PGL Distribution List

00-3.1 Requirement for Airline Competition Plans – Jim Borsari (202)267-3831

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181, April 5, 2000 contains section 155 that requires the submission of a competition plan by certain large and medium hub airports in order for a new Passenger Facility Charge (PFC) to be approved for collection or a grant to be issued under AIP beginning in Fiscal Year 2001. Section 155 amends both sections 47106 and 40117 of title 49, United States Code and as a result, there are slight differences in how competition plans will be handled depending on which program (AIP or PFC) is providing the approval.

For example, the amended section 40117 (the PFC portion of the statute) requires submission of the plan and Secretarial review of the plan for sufficiency before imposition of a PFC. Amended section 40117 also provides that the Secretary shall periodically review plan implementation to ensure that each airport successfully implements its plan. However, the amended section 47106 (the AIP portion of title 49) prohibits the approval of a PFC or the execution of a grant under AIP unless the airport has submitted a written competition plan conforming to the requirements of section 155. Accordingly, some level of review is needed for both AIP and PFC approval. Therefore, to provide time for necessary reviews under the AIP or PFC program, affected public agencies would need to submit the plan prior to Fiscal Year 2001 in order to permit the timely collection of new PFCs derived from PFC authority approved after April 5, 2000, and issuance of entitlement and/or discretionary AIP grants beginning October 1, 2000.

As background, the Department of Transportation issued a report entitled "Airport Business Practices and Their Impact on Airline Competition." This report can be viewed online by using the link at <http://www.faa.gov/arp/530home.htm>. Airport sponsors and public agencies should be strongly encouraged to review this report during the development of the competition plan.

Each airport needs to tailor a competition plan to reflect the unique nature of business at its airport. This competition plan should display the level of detail and complexity necessary to reflect the competitive circumstances at an airport as well as that airport's role in the national aviation system. This program guidance letter is intended to identify the statutory requirements for the plan as well as a general guideline for the types of information that should be considered. This is not intended to restrict the contents of the plan to the approach contained in this letter, as it only represents one of several possible approaches. While we encourage airports to provide the general types of information we request, we are not requiring that each airport address each of the topics. In developing their plans, public agencies may find it useful to consider the statutory finding and legislative history set forth below, in addition to the specific statutory requirements for the competition plans.

Statutory Finding

"Major airports must be available on a reasonable basis to all carriers wishing to serve those airports." Pub. L. 106-181, sec.155(a)(1).

Legislative History

"The underlying purpose of the competition plan is for the airport to demonstrate how it will provide for new entrant access and expansion by incumbent carriers. By forcing the airport to consider this, it would be more likely to direct its AIP and PFC money to that end." H. Rpt. 106-513 .

Statutory Requirements.

"Beginning in fiscal year 2001, no passenger facility fee may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subsection."

"CONTENTS.—A competition plan under this subsection shall include information on the availability of airport gates and related facilities, leasing and subleasing arrangements, gate-use requirements, patterns of air service, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels (as compiled by the Department of Transportation) compared to other large airports."

“COVERED AIRPORT DEFINED.—In this subsection, the term ‘covered airport’ means a commercial service airport—

“(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

“(B) at which one or two air carriers control more than 50 percent of the passenger boardings.” Pub, L. 106-181, sec. 155(b).

Covered Airports.

In compiling a list of covered airports, we intend to use the enplanement information consistent with the annual apportionment of passenger entitlements. The list for a fiscal year will be based upon the data collected for the most recent calendar year (e.g., the list for FY 2001 will be based upon CY 1999 enplanements). A preliminary list to permit airports to initiate plan development is attached. This list is based upon CY 1998 information and the final list should be updated in July 2000. For the purposes of this list, we have determined that an “air carrier” includes all affiliated or subsidiary airlines operating under a single certificate of public convenience and necessity issued by the Secretary of Transportation under 49 U.S.C. 40112.

Typical Competition Plan Information.

The following items may be considered in the development of the competition plan. The items are identified in the same order and using the same headings as contained in the statutory provision. The FAA would consider a competition plan that includes these items to meet the requirements of section 155. Public agencies are invited to offer and justify alternative approaches to developing a competition plan.

1. Availability of gates and related facilities (identify or describe).
 - Number of gates available at the airport by lease arrangement, i.e., exclusive, preferential, or common use.
 - Gate-use monitoring policy.
 - Differences, if any, between gate-use monitoring policy at PFC-financed facilities, facilities subject to PFC assurance #7, and other gates.
 - Has the PFC competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or has it caused such gates to become available to other users?
 - Gate utilization (departures/gate) per week and month.
 - Policy regarding “recapturing” gates that are not being fully used.

- Use/lose or use/share policies for gates and other facilities.
- Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport; methods of accommodating new gate demand by air carriers at the airport (common-use, preferential-use, or exclusive-use gates); and length of time between when an air carrier initially contacts the airport and could begin serving it.
- How are complaints of denial of reasonable access by a new entrant or an air carrier that wants to expand service resolved?
- Number of carriers in the past year that have requested access or sought to expand, how were they accommodated, and the length of time between any requests and access.

2. Leasing and subleasing arrangements (identify or describe).

- Whether a subleasing arrangement with an incumbent carrier is necessary to obtain access.
- How the airport assists requesting airlines obtain a sublease.
- Airport oversight policies for sublease fees and ground-handling arrangements.
- Airport policies regarding sublease fees (e.g., no more than 15 percent above the standard airport-determined fee).
- How complaints by subtenants about excessive sublease fees or unneeded bundling of services are resolved.
- How independent contractors who want to provide ground handling, maintenance, fueling, catering or other support services but have been unable to establish a presence at the airport are accommodated.
- Are formal arrangements in place to resolve disputes among air carriers regarding the use of airport facilities?

3. Patterns of air service (identify or describe).

- Number of markets served.
- Number of markets served on a non-stop basis. Average number of flights per day.
- Number of small communities served.
- Number of markets served by low-fare carriers.
- Number of markets served by one carrier.
- Number of new markets added or previously served markets dropped in the past year.

4. Gate assignment policy (identify or describe).

- Gate assignment policy and method of informing existing carriers and new entrants of this policy. This would include

standards and guidelines for gate usage and leasing, such as security deposits, minimum usage, if any, fees, terms, master agreements, signatory and non-signatory requirements.

- How announcements are made to tenant air carriers when gates become available. Do all tenant air carriers receive information on gate availability and terms and conditions by the same process at the same time?
- New policies that have been adopted or actions that have been taken to ensure that new entrant carriers have reasonable access to the airport and that incumbent carriers can expand their operations.

5. Financial constraints (identify or describe).

- The major source of revenue at the airport for terminal projects.
- Rates and charges methodology (residual, compensatory, or hybrid).
- Past use, if any, of PFC's for gates and related terminal projects.

6. Airport controls over airside and groundside capacity (identify or describe).

- Majority-in-interest (MII) or "no further rates and charges" clauses covering groundside and airside projects.
- List any capital construction projects that have been delayed or prevented because an MII was invoked.
- Plans, if any, to modify existing MII agreements?

7. Whether the airport intends to build or acquire gates that would be used as common facilities (identify or describe).

- The number of common-use gates available at the airport today.
- The number of common-use gates the airport intends to build or acquire (specify) and timeline. Intended financing arrangements for these common-use gates.
- Are any air carriers that have been serving the airport for more than three years relying exclusively on common-use gates?
- Whether common-use gates will be constructed in conjunction with gates leased through exclusive- or preferential-use arrangements.
- Whether gates being used for international service are available for domestic service.

- Do air carriers that only serve domestic markets now operate from international gates?
8. Airfare levels compared to other large airports. Information about airfare levels compared to other large airports is available at [http://ostpxweb.dot.gov/aviation\(Airport Competition Plan Data\)](http://ostpxweb.dot.gov/aviation(Airport%20Competition%20Plan%20Data)). Any questions about this database should be directed to Ms. Anita Edwards, Office of Aviation Analysis, DOT (202-366-0293).

Airport managers may submit the following data:

- Summarized data for the airport showing each carrier's local passengers, average fares, market share (based on passengers), and average passenger trip length. This information will be provided for the current year and, subsequently, trended as DOT makes more current information available. (Source: Table 1 of data provided by DOT)
- Summarized data for the airport showing local passengers, average passenger trip length, average passenger yield, and number of city-pair markets served disaggregated by distance (distinguishing between markets of 750 miles or less and markets over 750 miles), and depending upon whether or not a low-fare competitor is present. Compare to other airports that have similar average passenger trip lengths, for short distance markets, long distance markets, or in total. (Source: Table 2 of data provided by DOT)
- Additional information that is pertinent to particular circumstances at individual airports, and may not be apparent in the summarized information. For instance, fare trends at an airport may be influenced by changes in market mix, rather than just changes in price. Fare differences between airports may reflect differences in density or other factors as well as differences in distance. Table 3 of data provided by DOT provides for each city-pair market that is included in the summary data (markets involving an eligible medium or large hub airport that averaged 10 or more passenger a day) the following information: number of passengers, passenger revenue, nonstop and track mileage, and information on the number and type of competitors.

Periodic Updates to the Plan.

As identified above, the statute provides for the periodic review of the competition plans for PFC purposes and the FAA needs updated plans for action on subsequent PFC applications. In addition, FAA must have a current competition plan to issue each AIP grant. In an effort to minimize resource impacts, airports can satisfy these requirements by submitting updates to previously submitted plans rather than full competition plans. Also, since an airport may receive more

than one grant in a fiscal year, FAA will consider a plan or update to be current for an entire fiscal year.

In order for the Secretary to satisfy the statutory requirement to review implementation and for an airport to keep its plan current, it will be necessary for public agencies and covered airports to provide an annual update to their plan before the FAA can approve new PFC authority or process entitlement/discretionary grants.

In this section, we are identifying the information that would be considered typical for such an update. The updated plans should provide the analytic support needed for the airport to demonstrate how, over the past year, it has ... "provided for new entrant access and expansion of incumbent carriers." Similar to the case of the original competition plan, the update should be tailored to the circumstances of an airport and this information represents only one approach to the updates. For any information where there has been no change or no significant change, a simple negative declaration would be sufficient.

The information below also is identified by the same headings as the competition plan above.

1. Availability of gates and related facilities -- the airport could identify or describe changes relating to:

- (a) number and identity of any air carriers that have begun providing or stopped service;
- (b) number of new gates that have been built or are now available;
- (c) the number of gates that have been converted to common use status [note: this also applies to the common use gate category];
- (d) gate utilization;
- (e) gate recapture; or
- (f) accommodation of new entrants and incumbent carriers seeking to expand at the airport and resolution of any access disputes.

2. Leasing and subleasing arrangements -- the airport could identify or describe any major changes in:

- (a) contractual arrangements at the airport, for example, disposition of any gate lease agreements that were renewed or changed;
- (b) assuring access at the airport;
- (c) monitoring sublease fees; or
- (d) promoting the use of third-party contractors.

3. Patterns of air service -- the airport could identify changes relating to new markets served, new markets served by low fare carriers, or the number of markets served by one carrier.

4. Gate assignment policy -- major changes should be identified.
5. Financial Constraints -- airports could identify any additional financial constraints from the previous year or the relaxation of any financial constraints.
6. Airport controls over airside and groundside capacity -- the airport should identify any major changes in its rates and charges policy and describe whether and why the MII clause has been invoked in the past year.
7. Whether the airport intends to build or acquire gates that would be used as common facilities -- airports could provide any updates to plans for additional gates as common facilities.

Plan Submittal.

Covered airports should be advised to provide their competition plans and updates, in triplicate, to the appropriate regional or airports district office. Two copies of the submitted plan or update should be sent to APP-1 for further processing. Airports should also be advised that failure to provide an acceptable plan in a timely manner will affect the ability of the FAA to issue a grant or approval to collect a PFC. Review may take up to 60 days.

Plan Review Process.

Plans will be reviewed by a joint OST/FAA team to determine that the plan satisfies the statutory requirements. Plan acceptance and/or deficiency identification will be communicated to the airport involved by APP-1 with a copy to the servicing region.

Additional PFC Information.

Since the competition plan is not required as the result of PFC approvals prior to April 5, 2000, a covered airport (if it does not seek AIP grants) will not need to submit a plan unless it seeks new PFC authority subject to FAA approval. For the purposes of this guidance, such new PFC authority would be an increase in PFC level (\$3 to \$4.00 or \$4.50) and/or new collection authority applied for through an application or an amendment under 14 CFR Part 158.37(b). If no competition plan is submitted by a covered airport, only PFC authority approved prior to April 5, 2000 (as amended under 14 CFR Part 158.37(a), which does not require FAA approval) could be collected in and after FY 2001. Once this authority is exhausted, no subsequent authority could be implemented in FY 2001 and thereafter until successful submittal of the competition plan. Moreover, the FAA could not approve such authority if the approval action would take place on or after October 1, 2000, and a plan had not been submitted.

For example, in FY 2001, a public agency may seek to increase its previously approved PFC collection authority by more than 15 percent through an amendment under 14 CFR Part 158.37(b). Whereas the previously approved collection authority would have expired in December 2003, the amendment would extend collection authority to December 2004. FAA could not approve the new collection authority attributable to the amendment unless a competition plan had been submitted. However, the public agency could continue to collect the PFC under the original authority until it expires in December 2003, even without submitting a plan. In addition, the public agency could implement a 15 percent or less increase in FY 2001 or afterwards under 14 CFR Part 158.37(a) without a competition plan, because this type of amendment is not subject to FAA approval.

In order to minimize submittal requirements, airports submitting plans to satisfy AIP requirements will be considered to have satisfied PFC requirements and will not be required to resubmit its competition plan as part of a PFC application.

Plan Development Eligibility.

Competition plans and updates are eligible for AIP and/or PFC funding as master planning. Additionally, the scope of work for full master planning studies and updates for the full study must include a competition plan development or update as part of the effort (if the studies or updates include a review of terminal development). However, this requirement would not apply to master planning efforts that are either minor in scope or that are occurring at times that would create a duplication of effort with recently completed plans or updates.

Distribution of Guidance.

ARP will distribute a copy of this PGL via letter to each large and medium hub airport, and to those small hub airports that approached the level of enplanements necessary to qualify as a medium hub, based on CY 1998 enplanement data. A further letter will be issued in July and each July thereafter when the final list is completed.

Barry L. Molar

Attachment

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